

Claims 15-72 are pending in this application.

The certified translation of the foreign priority document, filed on 5/9/2011, is hereby noted for the record.

Applicant's election with traverse of the invention of Group II and species II-1-4 in the response filed on 4/15/2011 is acknowledged. Applicant is advised that the requirement to elect a single disclosed species of formula (II-1) is hereby withdrawn.

Applicant's traversal is based on the argument that MPEP 1850 states while lack of unity of invention should be raised in clear cases, it should not be raised on the basis of narrow, literal or academic approach. However, the lack of unity as set forth in the Office action is 2/15/2011 is indeed a clear case for the full reasons already provided in said Office action. In the same section of MPEP 1850 that applicant cites, an example is provided where lack of unity is stated as being proper when A is known in inventions A + X and A + Y. This is precisely the fact situation in this application, and applicant's argument is found unpersuasive.

Applicant also argues that undue burden is not the case here because all the inventions can be searched in class 514. This is not a reasonable argument as class 514 holds more than a quarter million documents.

For these reasons, the lack of unity requirement is still deemed proper and thereby maintained.

Claims 18-23, 26-60 and 64-69 are withdrawn from further consideration as being directed to non-elected inventions. Claims 15-17, 24-25, 61-63 and 70-72 will

presently be examined to the extent that they read on the elected subject matter of record.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 depends on claim 15. Claim 24 refers to a formula (II), but claim 15 recites a formula (II-1). Correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 15-17, 61-62, 70-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Lahm et al. (US 7,902,231).

Lahm et al. disclose compounds of formula 1, which is nearly identical to applicant's formula (II-1). See Lahm's claim 1 & paragraph bridging columns 1-2. Lahm's compound of formula 1 is combined with at least one additional biologically active agent, wherein abamectin is specifically claimed (claim 3). The amount of the

second ingredient is disclosed as an "effective amount" (column 56, lines 8-10), and the mixture of two pesticides provides broader spectrum of activity (column 56, lines 5-6). Lahm's claims 7, 12, 13 and 18 recite the compound that is applicant's compound (II-1-4). Method for controlling pests or their environment is disclosed (claim 5; see also from bottom of column 51 to column 55). Protecting an animal from pest is disclosed (claim 6). Spraying, topical application, and various other application methods are disclosed (column 58, lines 21-38). Further incorporation of surfactant or diluents is disclosed (claims 8-11, 14-17). Rate of application is taught to depend on factors such as the species of pest to be controlled, pest's life cycle, size, time of year, host crop or animal, temperature, and other such factors; and the rate for "active ingredient" ranges 0.01-2 kg/hectare for agricultural purposes and 0.1-150 mg/m<sup>2</sup> for non-agricultural purposes (paragraph bridging columns 58-59). "One skilled in the art can easily determine the biologically effective amount necessary for the desired level of invertebrate control." (column 59, lines 3-5).

Lahm et al. teach the same combination of two pesticides as claimed by applicant. This is an anticipation-based ground of rejection, so applicant's declaration evidence of 12/2/2010 does not apply here. The claims are thereby anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17, 24-25, 61-63 and 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lahm et al. (US 7,902,231).

Teachings of Lahm et al. were discussed above and the discussion there is incorporated herein by reference.

Lahm et al. do not specify a mixing ratio of the two active ingredients, but the two pesticides have been taught as having pesticidal properties and Lahm et al. disclose effective amounts as being well within the skill of the ordinary skilled artisan. Applicant's claimed ratios of 500:1 to 1:50, 25:1 to 1:10 and 25:1 (25:1 is *required* in applicant's claim 63 for abamectin + II-1-9) are noted.

One of ordinary skill in the art would have found it obvious to combine the two active ingredients at concentrations and application rates at which the individual ingredients are known to be effective to arrive at an effective mixture ratio. Keeping in mind that Lahm et al. expressly teaches the combination of abamectin and applicant's formula (II-1) compounds, the ordinary skilled artisan would necessarily have arrived at a mixing ratio. Even 25:1 to 1:10 is a broad enough range that the ordinary skilled artisan would have found it obvious to combine the two known pesticides at such mixing ratio range to obtain the claimed invention.

Regarding applicant's specification and 12/2/2010 declaration data, it is the position of the Examiner that the data is insufficient against the near-identical teachings of Lahm et al. With respect to claims 15-17, 61-62, 70-72, which have been found

anticipated above, applicant's test data fails to outweigh the evidence of obviousness because Lahm et al. clearly disclose the combination of the two pesticides as claimed. With respect to the remaining claims that recite a specific ratio, the Examiner's position is the same but with additional comments as set forth below.

For a given mixture of two pesticides, as taught by Lahm et al. in their patented invention, one of ordinary skill in the art would have found it obvious to combine the two pesticides at various ratios depending on myriad factors such as target insect pests and other such considerations (see Lahm et al., column 58, lines 57-62). Because no pesticide or mixture of pesticides delivers its pesticidal activity in a perfectly linear dose-response manner, one of ordinary skill in the art would have had an expectation of variation in activity for the patented invention of abamectin + Lahm's formula 1 (which is substantially the same as applicant's formula II-1). Given this expectation, applicant's data is no more than the expected variation of activity when the two pesticides of Lahm's invention are combined as taught.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited reference.

For these reasons, all claims must be rejected at this time.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

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/John Pak/  
Primary Examiner, Art Unit 1616